Filed 1/2/19 Marriage of Kiwan CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

In re the Marriage of MOUNA and ELIAS KIWAN.	C083939
MOUNA KIWAN, Appellant, v. ELIAS KIWAN, Respondent.	(Super. Ct. No. SDR0046279)

Mouna Kiwan appeals from a postjudgment order denying her motion to set aside the judgment dissolving her marriage to Elias Kiwan. On appeal, Mouna contends the trial court abused its discretion in denying her motion and ignoring several of her claims in the trial court. She asks this court to set aside the stipulation for settlement and "remand the case to the trial court." We affirm the orders of the trial court.

FACTS AND PROCEEDINGS

The parties married in 1999 and separated in 2014. On March 25, 2016, the parties appeared with their attorneys at a settlement conference in superior court. At the conclusion of that conference, the parties executed a settlement agreement that resolved all their disputed issues except for attorneys' fees. The settlement judge, Sally Callahan, questioned the parties and both confirmed they understood the terms of the agreement, they reviewed the same with their attorneys, and they agreed to the terms.

In April 2016, Mouna replaced her attorney and advised Elias that she was repudiating the settlement agreement. Elias soon filed a motion for entry of judgment on the terms of the settlement agreement under Code of Civil Procedure section 664.6. Mouna opposed the motion and asked the trial court to set aside the settlement agreement. Mouna claimed her prior counsel coerced her to sign the agreement, she did not understand the agreement terms, and the agreement was "void" due to a conflict of interest (she had previously consulted with Ms. Callahan about her case).

Mouna subsequently filed a motion to set aside the judgment, though no judgment had yet been entered, based on Family Code section 2122 and Code of Civil Procedure section 473. She argued the settlement agreement should be set aside based on mistake and excusable neglect, the alleged conflict involving Ms. Callahan, and Mouna's assessment that the agreement was "unjust" and unfavorable to her. Elias opposed the motion.

On October 3, 2016, the parties appeared before the court; both were represented by counsel. At that hearing, Mouna "conceded and agreed the judgment should issue per [Elias's] request for order" and the court proceeded to address her set-aside motion. After "carefully consider[ing] the pleadings on file, arguments of the parties and all evidence both oral and documentary," the court denied Mouna's motion. In reaching its

decision, the trial court found Mouna "failed to present sufficient credible evidence to set aside the judgment and failed to meet her burden of proof."

Mouna appeals from that order.

DISCUSSION

A. Standard of Review

" 'A judgment or order of the lower court is *presumed* correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

" '[A] party challenging a judgment [or order] has the burden of showing reversible error by an adequate record.' [Citation.] . . . A proper record includes a reporter's transcript or a settled statement of any hearing leading to the order being challenged on appeal." (*Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 574.)

Here, the record on appeal does not contain a reporter's transcript of the trial. This is referred to as a judgment roll appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083.) "On such an appeal, '[the] question of the sufficiency of the evidence to support the findings is not open.' " (*Id.* at p. 1082.) Instead, we presume that all findings by the trial court are supported by substantial evidence, and we can only consider whether the judgment is supported by the findings or whether reversible error " 'appears on the face of the record.' " (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324-325.)

Moreover, the record on appeal does not include a statement of decision. " 'Under the doctrine of "implied findings," when parties waive a statement of decision expressly or by not requesting one in a timely manner, appellate courts reviewing the appealed judgment must presume the trial court made all factual findings necessary to support the judgment for which there is substantial evidence.' [Citations.] A party who does not

request a statement of decision may not argue the trial court failed to make any finding required to support its decision. [Citations.]" (*In re Marriage of McHugh* (2014) 231 Cal.App.4th 1238, 1248.)

B. Analysis

Mouna contends the court abused its discretion in refusing to set aside the settlement agreement on the basis of Ms. Callahan's potential conflict of interest. We are not persuaded. The law is clear: "[a] disqualified judge, notwithstanding his or her disqualification may do any of the following: [¶] . . . [¶] (6) conduct settlement conferences." (Code Civ. Proc., § 170.4; see also *Mezzetti v. Superior Court* (1979) 94 Cal.App.3d 987, 993 [judge disqualified under section 170.6 is not disqualified from conducting settlement conference].) Thus, whether there was a conflict of interest, Ms. Callahan was not prohibited from serving as the settlement conference judge. The court was, therefore, acting within its discretion refusing to set aside the settlement agreement on this basis.

Mouna also contends the trial court abused its discretion by ignoring or failing to consider several of her arguments in the trial court. Specifically, she claims: (1) the court failed to consider the "unconscionability of the provisions of the Stipulation for Settlement," (2) the court ignored the "coercion and duress by [Mouna's] prior counsel," (3) and "failed to consider the irregularities and unauthorized transfers of bank account funds, retirement accounts, and stock valuations."

The record does not support Mouna's contention. In its written order, the trial court stated that it "carefully considered the pleadings on file, arguments of the parties and all evidence both oral and documentary." Without a reporter's transcript or a statement of decision, we must presume the trial court did exactly what the court said it did: considered each argument raised and correctly applied the law to the evidence admitted. (Evid. Code, § 664; *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913-914; *People v. Adanandus* (2007) 157 Cal.App.4th 496, 503.) We must also presume the court

made all the necessary findings in support of its decision. (*In re Marriage of McHugh*, *supra*, 231 Cal.App.4th at p. 1248.)

Mouna further argues the judgment should have been set aside due to "mistake, inadvertence, or excusable neglect." This argument fails for several reasons. First, "[w]e need not consider this separate argument appended as it is to another argument. (Cal. Rules of Court, rule 8.204(a)(1)(B).)" (*Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 470.)

Second, while she argues the judgment should be set aside due to mistake, inadvertence, or excusable neglect, Mouna does not explain why. Her entire argument is contained in the following statement: "By virtue of [Mouna's] attorney failing to adequately advise her as to her rights, explain a conflict of interest, nor [fully] investigate the conversion of monies by [Elias]." She also fails to support the claim with any citation to the record. We will not consider claims made in a perfunctory fashion and without supporting argument. (*People v. Redd* (2010) 48 Cal.4th 691, 744; *People v. Earp* (1999) 20 Cal.4th 826, 881.)

Third, when an appeal is on the judgment roll we presume the evidence supports the trial court's ruling unless error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521-522.) Having reviewed the limited appellate record, we conclude Mouna has not met her burden of establishing error.

Finally, Mouna contends the stipulation for settlement "should have been set aside under Family Code section 2120, et seq." Again, however, she fails to support her claim with citation to the record or meaningful argument. We will not consider such perfunctory claims. (*People v. Redd*, *supra*, 48 Cal.4th at p. 744; *People v. Earp*, *supra*, 20 Cal.4th at p. 881.) In any event, we presume on this limited record that the trial court properly exercised its discretion by correctly applying the law and giving due

consideration to the evidence before it, and that the evidence was sufficient to justify the orders issued by the court. (*Ehler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.)

DISPOSITION

The orders of the trial court are affirmed. Elias Kiwan is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

HULL, J.

We concur:

RAYE, P. J.

HOCH, J.